

FEB. 5. 2007 4:40PM

CBL&H 202 293 6229

NO. 7935 -P. 3 — — —

RECEIVED
CENTRAL FAX CENTER

FEB 05 2007

Docket No.: 22316-00037-US2
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Daniel J. Drucker et al.

Application No.: 10/829,201

Confirmation No.: 5544

Filed: April 22, 2004

Art Unit: 1646

For: ENHANCEMENT OF GLP-2 ACTIVITY

Examiner: D. Jiang

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed January 5, 2007 (Paper No. 5544), applicant hereby provisionally elects Group I (claims 1-6) for continued examination, with traverse.

The Examiner has required restriction between:

- I. Claims 1-6, drawn to a pharmaceutical combination comprising a GLP-2 activity enhancer and a GLP-1 activity inhibitor, and a kit thereof, classified in class 514, subclass 2.
- II. Claims 7-9, drawn to a method of treating a condition, disease or disorder of GI tract with the pharmaceutical combination, classified in class 514, subclass 2.
- III. Claims 7, 10 and 11, drawn to a method of treatment with the pharmaceutical combination to suppress appetite, classified in class 514, subclass 2.

Application No.: 10/829,201

Docket No.: 22316-00037-US2

The requirement for restriction is improper because there would not be an undue burden on the examiner if restriction were not required. There are two criteria for a proper requirement for restriction outlined in MPEP 803(I) (see also MPEP 808):

- (A) The inventions must be independent or distinct as claimed; and
- (B) There would be a serious burden on the examiner if restriction is not required.

In a proper requirement for restriction, an explanation showing why there would be a serious burden on the examiner (absent restriction) must be provided. MPEP 808.02. The instant restriction requirement provides no explanation (or assertion) that failure to restrict would pose an undue burden on the examiner. Instead, the opposite is shown. Groups I-III are classified in the same class and subclass. Therefore, one search of the identified class and subclass would encompass all of Groups I-III.

To fully comply with the requirement for restriction, applicants have elected Group I, with traverse but because the restriction is improper (as explained above) applicants anticipate its withdrawal. Thus, an election of species from Group II is necessary. Applicants hereby elect the species "small bowel syndrome", with traverse from Group II. Claims 7-9 read on the elected species. Applicants traverse the election of species requirement for the same reasons provided above, i.e. no serious burden has been asserted and explained. One search of the identified class and subclass would encompass all of Groups I-III.

In the event the requirement for restriction and the election of species requirement are not withdrawn in response to this communication, the following remarks apply.

Claim 7 is a linking claim and is included in both Groups II and III. Pursuant to linking claim practice, applicants request that when all claims directed to the elected invention are allowable the restriction requirement between the linked inventions be withdrawn and the linking claim also allowed. MPEP 809.

Finally, applicants exercise their right to rejoinder of the method claims upon allowance of the elected product claims.

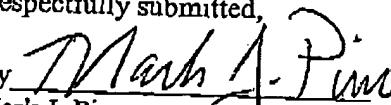
Application No.: 10/829,201

Docket No.: 22316-00037-US2

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22316-00037-US2 from which the undersigned is authorized to draw.

Dated: 2/5/07

Respectfully submitted,

By 
Mark J. Pino

Registration No.: 43,858

R. James Balls

Registration No.: 57,703

CONNOLLY BOVE LODGE & HUTZ LLP

1990 M Street, N.W., Suite 800

Washington, DC 20036

(202) 331-7111

Attorneys for Applicant

FEB. 5. 2007 4:40PM

CBL&H 202 293 6229

— — — NO. 7935- P. 1

RECEIVED
CENTRAL FAX CENTER

FEB 05 2007

FAX TRANSMISSION

DATE: February 5, 2007

PTO IDENTIFIER: Application Number 10/829,201
Patent Number

Inventor: Daniel J. Drucker et al.

MESSAGE TO: US Patent and Trademark Office

FAX NUMBER: (571) 273-8300

FROM: CONNOLLY BOVE LODGE & HUTZ LLP

Mark J. Pino

PHONE: (202) 331-7111

Attorney Dkt. #: 22316-00037-US2

PAGES (Including Cover Sheet): 5

CONTENTS: Response to Restriction Requirement (3 pages)
Certificate of Transmission (1 page)

If your receipt of this transmission is in error, please notify this firm immediately by collect call to sender at (202) 331-7111 and send the original transmission to us by return mail at the address below.

This transmission is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or duplication of this transmission by someone other than the intended addressee or its designated agent is strictly prohibited.

CONNOLLY BOVE LODGE & HUTZ LLP
1990 M Street, N.W., Suite 800, Washington, DC 20036
Telephone: (202) 331-7111 Facsimile: (202) 293-6229

FEB. 5. 2007 4:40PM CBL&H 202 293 6229

— — — NO. 7935- P. 2

RECEIVED
CENTRAL FAX CENTER

FEB 05 2007

PTO/SB/07 (08-04)

Approved for use through 07/31/2006. OMB 0651-0031

U. S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

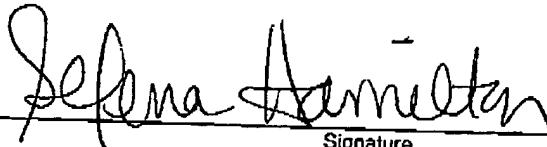
Application No. (if known): 10/829,201

Attorney Docket No.: 22316-00037-US2

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office.

on February 5, 2007
Date



Signature

Selena Hamilton

Typed or printed name of person signing Certificate

Registration Number, if applicable

(202) 331-7111

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Response to Restriction Requirement (3 pages)
Certificate of Transmission (1 page)